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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-507

RIGOBERTO GONZALEZ, ET AL.,
Petitioners,

versus

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
LOCAL NO. 1581, AFL-CIO,
Respondent.

RESPONDENT'S REPLY TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To The Honorable The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Respondent prays that petitioner's petition for writ of certiorari be denied.

ISSUE

Did the Court of Appeals for the Fifth Circuit correctly hold that there was no jurisdiction under Section 301(a) of the Labor Management Relations Act?

STATEMENT

I.L.A. Local 1581 is a small union of about 100 active members whose membership works for various employers at the Port of Houston. In January of 1971 the Port of Houston Authority took over operations of the Long Reach Plant which employed many of the members of I.L.A. Local 1581. Contrary to past practice the Port of Houston Authority commenced hiring on a day-to-day basis. For the first time in its history of about 36 years it became necessary for I.L.A. Local 1581 to adopt a formal hiring hall and seniority plan as means of referring employees to the Port of Houston Authority. Such a plan was adopted by a majority vote of the membership in October of 1971. After considerable dissatisfaction with the operation of the plan a subsequent plan was adopted in June of 1972. Those members who were disgruntled with the June, 1972 plan have brought this lawsuit.

The district court held after a trial on the merits that the complaint should be dismissed for want of jurisdiction and in the alternative that the defendant should prevail on merits. The Fifth Circuit Court of Appeals sustained the district court's dismissal for want of jurisdiction.

REASONS FOR DENYING THE WRIT

1. There was no collective bargaining contract before the district court to give it jurisdiction under Section 301(a) of the Labor Management Relations Act, 1947. 29 U.S.C.A. § 185(a). Any such agreement with the Port of Houston Authority would have been void as contrary to the statutory policy of the State of Texas. Vernon's Ann. Civ. St. Art. 5154c, § 1. This finding by the Fifth Circuit Court of Appeals is not in conflict with any decision by this Court.

Retail Clerks Int'l Ass'n v. Lion Dry Goods, Inc.[1] relied upon by Petitioners is not dispositive since it involved an agreement between a labor organization and a *private* employer. The record in the instant case reflects that the hiring hall and seniority plan were developed internally without the participation of any employer, public or private. The "strike settlement agreement" in *Lion Dry Goods, Inc.* which the Court found conferred jurisdiction on the federal district court under Section 301 of the Labor Management Relations Act is factually remote from the instant case where a contractual relationship between Respondent I.L.A. Local 1581 and the State of Texas is prohibited by Statute. Similarly factually remote is *N.L.R.B. v. International Longshoremen's Ass'n, Local 1581*[2] which involved a Board finding of a specific statutory violation by I.L.A. Local 1581 in requiring citizenship as a basis for job preference with a private employer. To suggest that there is an analogy to the issue raised in this case is to invite the Court to engage in speculation.

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1. 369 U.S. 17.

2. 489 F.2d 635 (5th Cir. 1974), petition for writ of certiorari filed August 14, 1974, case no. 74-117.

2. The Court of Appeals did not depart from the accepted and usual course of judicial proceedings so far as to call for an exercise of this Court's power of supervision. Petitioner cites no authority for this proposition. The record below was fully developed and Respondent submits that it fairly supports the procedure followed by the Fifth Circuit.

3. There is no important question of federal law which should be settled by the Court in this case. At issue is a rather narrow factual issue involving local law. The facts were found adversely to the Petitioners and there was no showing that such findings were "clearly erroneous". There is simply absent the type of agreement that is the necessary predicate for jurisdiction under Section 301(a) of the Labor Management Relations Act.

CONCLUSION

For the foregoing reasons, Respondent prays that Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BROCK & WILLIAMS

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CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the foregoing Respondent's Reply To Petitioner's Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit were served on the Counsel for Petitioners, Rigoberto Gonzalez, et al., Mr. Kenneth L. Tilley, 802 Texas Professional Tower, Houston, Texas, 77002, by Certified Mail on this the 21 day of November, 1974.

Warner F. Brock

WARNER F. BROCK